In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1237

RICHARD LEE WOLFE, PETITIONER

v.

UNITED STATES OF AMERICA

No. 6431

RICHARD FREDERICK HOLSTEIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of Texas, petitioners were convicted on three counts charging, respectively,

conspiracy to smuggle and transport, smuggling, and receiving, marihuana, all in violation of 21 U.S.C. 176a. Petitioner Holstein was sentenced to concurrent seven-year prison terms; petitioner Wolfe received concurrent five-year terms. The court of appeals affirmed *per curiam* (Pets. App. A).

The sole contention advanced here by both petitioners is that the invoicing requirement of Section 176a violated petitioners' privilege against compulsory self-incrimination under the rationale of *Leary* v. *United States*, 395 U.S. 6. That claim has been consistently rejected. If the marihuana had been declared at the border, the confiscation would have occurred before it entered the United States. Thus, the claim that petitioners would have been forced to incriminate themselves under Texas law punishing possession of marihuana within the state is without merit. See, *e.g.*, *Witt* v. *United States*, 413 F. 2d 303 (C.A. 9), certiorari denied, 396 U.S. 932; *United States* v. *Reyes-Meza De Polanco*, 422 F. 2d 1304 (C.A. 9), certiorari denied, 397 U.S. 1081; *Walden* v. *United States*, 417 F. 2d 698 (C.A. 5); *United States* v. *Houle*, 428 F. 2d 816 (C.A. 5), certiorari denied, October 26, 1970 (No. 5576, this Term).

It is therefore respectfully submitted that the petitions for writs of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1971.

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